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J. DOMINIC MONAHAN

June 21, 1995

DOCKET FILE COPY ORIGINAL

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street NW
Washington, D.C. 20554

RECEIVED

JUN 22 1995

FCC MAIL ROOM

RE: **Opposition to Proposed Rulemaking**
MM Docket No. 95-53/RM-8613

Dear Mr. Caton:

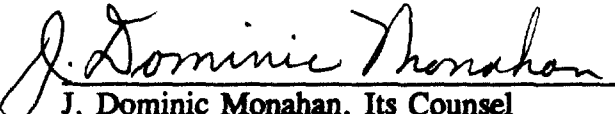
There is transmitted herewith on behalf of Combined Communications, Inc., the licensee of Stations KUGN-AM/FM, Eugene, Oregon, and Station KLRR(FM), Brownsville, Oregon, an Opposition to Petition for Rulemaking in the above captioned matter.

An extra copy of this transmittal letter is enclosed, as well as a pre-addressed, stamped envelope. Please confirm your receipt of the filing of this opposition by date stamping the extra copy of this transmittal letter and returning it to the undersigned counsel.

Should additional information be desired, please contact the undersigned counsel.

Respectfully submitted,

COMBINED COMMUNICATIONS, INC.


J. Dominic Monahan, Its Counsel

JDM/nlk

cc: **Lars Conway (w/enclosure)**
John A. Karousos, FCC (w/enclosure)

No. of Copies rec'd
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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In the Matter of)
)
Amendment of Section 73.202(b),) **RM-8613**
Table of Allotments,) **MM Docket No. 95-53**
FM Broadcast Stations)
(Eugene, Oregon))

RECEIVED

JUN 22 1995

TO: Chief, Allocations Branch

OPPOSITION TO PETITION FOR RULEMAKING

FCC MAIL ROOM

Combined Communications, Inc. ("Combined"), the licensee of Stations KUGN-AM/FM, Eugene, Oregon, through its counsel, respectfully submits its opposition to the Petition for Rulemaking submitted to the Commission by Conway Broadcasting ("Conway")¹ on February 28, 1995, proposing the addition of FM Channel 265A to the Commission's FM Table of Allocations. The Commission has requested comments on the proposal in its *Notice of Proposed Rulemaking* in Docket No. 95-53, released May 1, 1995.

¹ Conway is also the proponent of at least six other proposals for new FM channels in North Dakota, South Dakota and Montana. These include:

Billings, MT, Channel 242C-1, Docket 95-95, *Notice of Proposed Rulemaking* released May 12, 1995;

Billings, MT, Channel 298C; Docket 95-36, *Notice of Proposed Rulemaking* released April 10, 1995;

Rapid City, SD, Channel 222C, Docket 95-34, *Notice of Proposed Rulemaking* released March 29, 1995;

Dell Rapids, SD, Channel 239C-3, Docket 94-141, *Report and Order* released April 24, 1995;

Rapid City, SD, Channel 292C, Docket 94-140, *Report and Order* released April 10, 1995;

Harwood, ND, Channel 264C-3, Docket 95-30, *Notice of Proposed Rulemaking* released March 3, 1995.

Standing

Combined operates Radio Stations KUGN and KUGN-FM which are licensed to Eugene, Oregon. It is also the licensee of Station KLRR(FM), licensed to Brownsville, Oregon. These stations provide service to the Eugene market and compete for both listeners and advertising revenues. Thus Conway's proposal directly impacts the broadcast operations of Combined. Accordingly, Combined has standing to file this petition. See *FCC v. Sanders Brothers Radio Station*, 309 U.S. 470 (1940); *Broadcast Enterprises, Inc. v. FCC*, 390 F2d 483 (D.C. Cir. 1968); *Stoner Broadcasting System, Inc.*, 74 FCC 2d 547 (1979).

For reasons set forth herein, and as supported by the attached engineering statement, the proposal of Conway to add Channel 265A to Eugene, Oregon must be rejected and dismissed for failure to comply with the Commission's technical rules governing allocations. Section 73.315(b) of the Commission's rules requires that where it cannot be demonstrated that a site is available which permits line-of-sight coverage over a community or a transmission path free of major obstructions, the proponent has an obligation to demonstrate by engineering evidence that the received signal strength as transmitted from a site will exceed 70 dbu and will encompass the entire principal community of license. In this instance, the ability of Conway to effectuate its proposal with an acceptable transmitter site is severely limited by the spacing obligations Conway has to other existing facilities on adjacent channels². As a result of these limitations, any use of Channel 265A to serve

² The relevant facilities are as follows:

| Station-City | Chan | Spacing (KM) | |
|------------------------|-------|--------------|----------|
| | | Actual | Required |
| KCGR Cottage Grove, OR | 263A | 31.8 | 31.0 |
| KZUS Toledo, OR | 264C2 | 106.3 | 106.0 |
| KICE Bend, OR | 264C1 | 133.9 | 133.0 |

Eugene, Oregon would restrict the location of a transmitter site to a very small triangle of land less than a mile square (see Exhibit No. 2 of engineering). As demonstrated, the presence of an intervening terrain and a high promontory rising almost 700 feet above Conway's proposed site area creates a severe shadowing within Eugene. Exhibit 4 of the attached engineering demonstrates that at least fifty percent (50%) of the area within the Eugene city limits would be shadowed from any transmitter site in the restricted area from which Conway would have to operate.

The engineering also demonstrates that standard FAA limitations would preclude antenna height of more than 150 meters above ground level in the proposed transmitter site area³. Even assuming the use of an antenna height of 150 meters, the shadowing problem would not be overcome. The engineering also demonstrates that this problem exists on path profiles premised on radial studies from 250° through 290°.

In view of the engineering evidence demonstrating that line-of-sight cannot be achieved, petitioner Conway is obligated to demonstrate that the signal strength from his site will in fact exceed 70 dbu and encompass the entire community. *Creswell, Oregon*, 3 FCC Rcd 4608 (1988), *Recon. Denied* 4 FCC Rcd 7040 (1989).

CONCLUSION

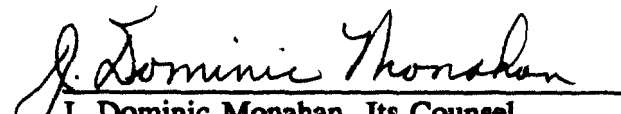
In view of Conway's failure to demonstrate that line-of-sight coverage can be obtained over the City of Eugene, its petition for rulemaking fails to meet the Commission's technical requirements and must be rejected. Accordingly, Combined Communications, Inc.

³ A major part of the restricted area from which Conway might locate a transmitter is private property where gravel reclamation operations are conducted. This present use raises an additional question as to whether any site is actually available.

respectfully requests that the petition for rulemaking filed by Conway Broadcasting be denied.

Respectfully submitted,

COMBINED COMMUNICATIONS, INC.


J. Dominic Monahan, Its Counsel

Dated: June 21, 1995

ENGINEERING STATEMENT IN REFERENCE TO PROPOSED ALLOCATION OF
CHANNEL 265A TO EUGENE, OREGON

Conway Broadcasting has submitted a Petition for Rule Making proposing that channel 265A should be added to the Commission's FM Table of Allotments at Eugene, OR (Docket 95-53). The engineering documentation submitted by the petitioner (Exhibit 1) indicates that the location of the proposed transmitter site will be severely restricted to a small area because of mileage limitations to adjacent channel facilities. An examination of the terrain between the proposed transmitter location and Eugene, OR reveals that it will not be possible to achieve line-of-site from the antenna to a substantial portion of the city of license as required by FCC Rules 73.315(b).

A portion of the 7.5 minute topographical map for Eugene East, OR is attached (Exhibit 2) which shows the proposed transmitter site at North Latitude 44-01-24, West Longitude 123-00-00. The arcs drawn around the site show the required spacing from existing facilities on adjacent channels. The relevant stations are listed below:

| Station-City | | Chan | Spacing (KM) | |
|--------------|-------------------|-------|--------------|----------|
| | | | Actual | Required |
| KCGR | Cottage Grove, OR | 263A | 31.8 | 31.0 |
| KZUS | Toledo, OR | 264C2 | 106.3 | 106.0 |
| KICE | Bend, OR | 264C1 | 133.9 | 133.0 |

A series of profile graphs were prepared of the terrain along

radials that extend from the proposed transmitter site (Exhibit 3A-3E). These radials pass over the southern portion of Eugene, OR. The profile graphs show a major obstruction in the form of a 250-300 meter MSL north-south ridge. As the profile graphs show, the antenna would have to be mounted on at least a 300 meter tower to begin to achieve line-of-site into the city of license. A 600 meter tower would be required to achieve a satisfactory line-of-site.

Examination of the site map (Exhibit 2) shows that the proposed site is approximately 1.6KM from the Interstate 5 freeway. The Federal Aviation Administration considers interstate freeways to be flyways for General Aviation and they have a policy that limits tower heights within 3.2KM of the freeway to a maximum of 150 meters. Since the FAA would not approve the use of a taller tower in this area, any applicant for this proposed facility would be precluded from erecting a tower exceeding 150 meters. The profile graphs show that the use of a 150 meter tower for the proposed site would not be sufficient to achieve line-of-site over the city of license. Exhibit 4 shows the shadowing that would be created over 50% of the city with the use of this height of tower. Relocation of the antenna to any other point within the extremely restricted allowed area would not improve the line-of-site into the city.

Therefore the proposed allocation would not be consistent with the requirements of FCC 73.315(b) in that "line-of-site" from the antenna over the principle city cannot be achieved and that there is a "major obstruction" in this path. Because of these factors

the Petition for Rule Making should be DENIED.

This narrative and the attached exhibits were prepared by me
and are true and correct to the best of my belief.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Ted G. Hicks".

Ted G. Hicks
Technical Director
Combined Communications, Inc.
June 20, 1995

FM Channel Search for: Eugene, Oregon
Coordinates used: 44- 1-24/123- 0- 0

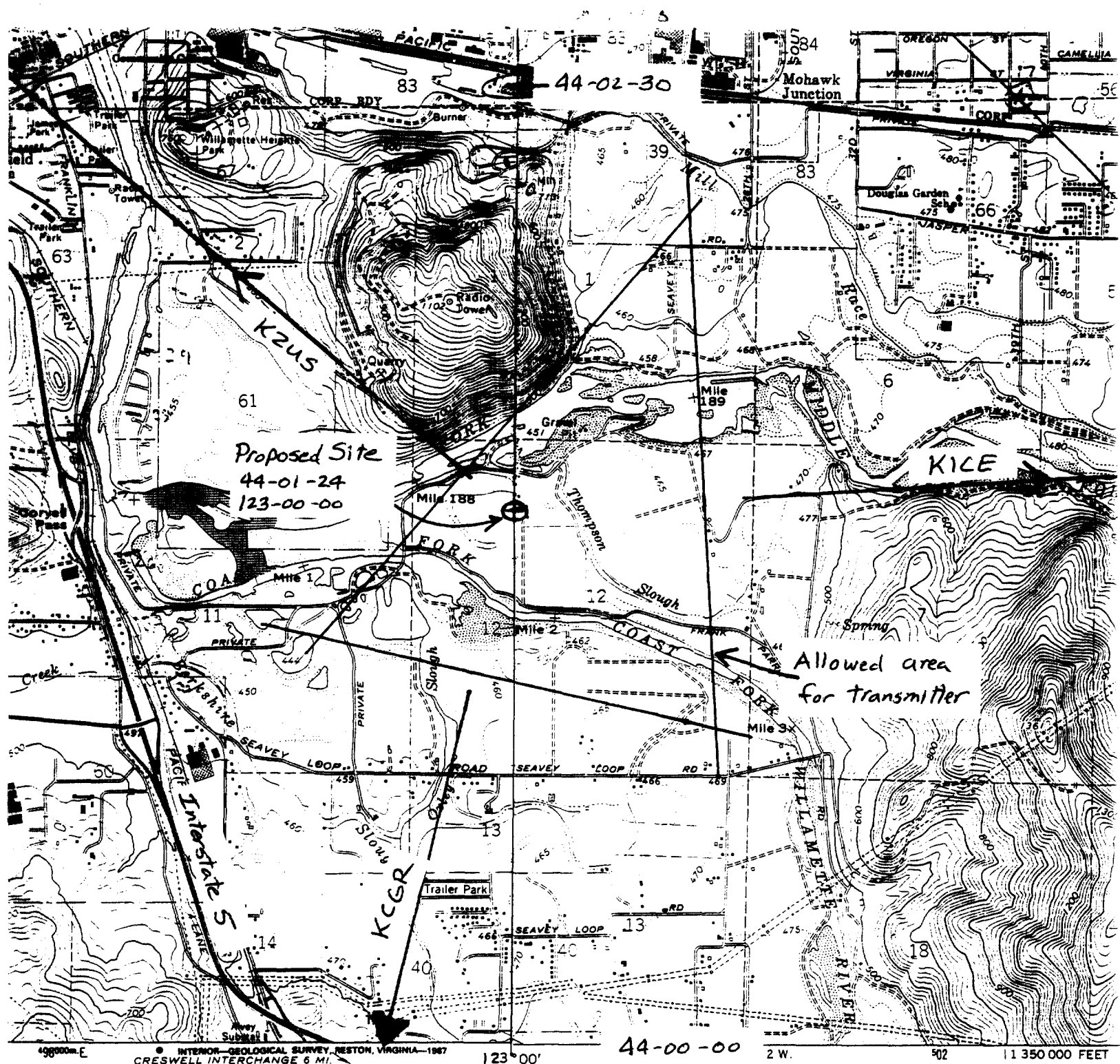
Mueller Broadcast Design
613 S. LaGrange Rd
LaGrange, IL 60525

NOTE: All distances are in Kilometers. Any stations which clear by more than 100 KM are not included in list.

| Study for channel 265-A (100.9MHz) | | | | -----Spacing----- | | |
|------------------------------------|------|-----------------|-------|-------------------|-----|----------------|
| Call | File | Location | Class | Actual | FCC | Clearance |
| 211 (90.1 MHz) | | | | | | |
| K211BP | LIC | Florence | OR D | 81.8 | 0 | 81.8 @ 278.3° |
| 212 (90.3 MHz) | | | | | | |
| NEW-T | APP | Eugene | OR D | 9.4 | 0 | 9.4 @ 255.5° |
| K212AK | LIC | Corvallis | OR D | 72.5 | 0 | 72.5 @ 342.8° |
| 262 (100.3 MHz) | | | | | | |
| USE | | Portland | OR C | 167.8 | 95 | 72.8 @ 6.7° |
| KKRZ | LIC | Portland | OR C | 167.8 | 95 | 72.8 @ 6.7° |
| KRWQ | LIC | Gold Hill | OR C1 | 174.6 | 75 | 99.6 @ 181.8° |
| USE | | Gold Hill | OR C1 | 174.6 | 75 | 99.6 @ 181.8° |
| 263 (100.5 MHz) | | | | | | |
| USE | | Cottage Grove | OR A | 31.0 | 31 | 0.0 @ 186.5° |
| KCGR | LIC | Cottage Grove | OR A | 31.8 | 31 | 0.8 @ 193.3° ← |
| 264 (100.7 MHz) | | | | | | |
| K264AA | CP | Corvallis, etc. | OR D | 72.5 | 0 | 72.5 @ 342.8° |
| KZUSFM | APP | Toledo | OR C2 | 106.3 | 106 | 0.3 @ 310.9° ← |
| KZUSFM | LIC | Toledo | OR A | 106.3 | 72 | 34.3 @ 310.9° |
| | VAC | Toledo | OR C2 | 107.6 | 106 | 1.6 @ 310.8° |
| | USE | Bend | OR C1 | 133.9 | 133 | 0.9 @ 86.8° |
| KICE | LIC | Bend | OR C1 | 133.9 | 133 | 0.9 @ 86.8° ← |
| 265 (100.9 MHz) | | | | | | |
| K265DF | CP | Eugene | OR D | 9.5 | 0 | 9.5 @ 255.7° |
| K265CX | LIC | Cottage Grove | OR D | 27.6 | 0 | 27.6 @ 187.2° |
| K265CZ | LIC | Oakridge | OR D | 55.2 | 0 | 55.2 @ 119.7° |
| K265AB | LIC | Florence | OR D | 86.4 | 0 | 86.4 @ 265.4° |
| K265CM | LIC | Roseburg | OR D | 96.2 | 0 | 96.2 @ 198.8° |
| 266 (101.1 MHz) | | | | | | |
| VAC | | Sutherlin | OR A | 75.0 | 72 | 3.0 @ 200.0° |
| NEW | APP | Sutherlin | OR A | 77.3 | 72 | 5.3 @ 199.3° |
| NEW | APP | Sutherlin | OR A | 79.2 | 72 | 7.2 @ 208.6° |
| KUFO | LIC | Portland | OR C | 167.2 | 165 | 2.2 @ 7.2° |
| USE | | Portland | OR C | 167.2 | 165 | 2.2 @ 7.2° ← |
| 268 (101.5 MHz) | | | | | | |
| USE | | Corvallis | OR C2 | 66.6 | 55 | 11.6 @ 342.8° |
| KFLY | LIC | Corvallis | OR C2 | 66.6 | 55 | 11.6 @ 342.8° |

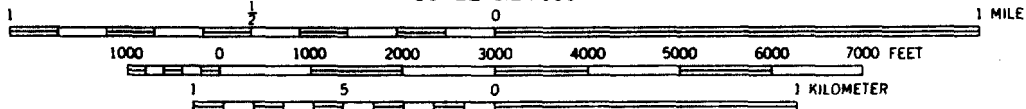
This channel can be used by a class-A station.

EXHIBIT 1
Combined Communications



INTERIOR GEOLOGICAL SURVEY, RESTON, VIRGINIA—1967
CRESWELL INTERCHANGE 6 MI.
COTTAGE GROVE 15 MI.

SCALE 1:24 000



CONTOUR INTERVAL 20 FEET
DOTTED LINES REPRESENT 5-FOOT CONTOURS
NATIONAL GEODETIC VERTICAL DATUM OF 1929
EUGENE EAST, OREG. zone 10, shown in
44123-A1-TF-024 Red tint indicates:
1967 Fine red dashed line
PHOTOREVISED 1986
DMA 1372 II SE-SERIES V892

EXHIBIT 2 Combined Communications

JTM GRID AND 1967 MAGNETIC DECLINATION AT CENT

Map compiled from aerial
and other sources
checked. Map edited 1986

Proposed Site Path Profile

250 degree radial

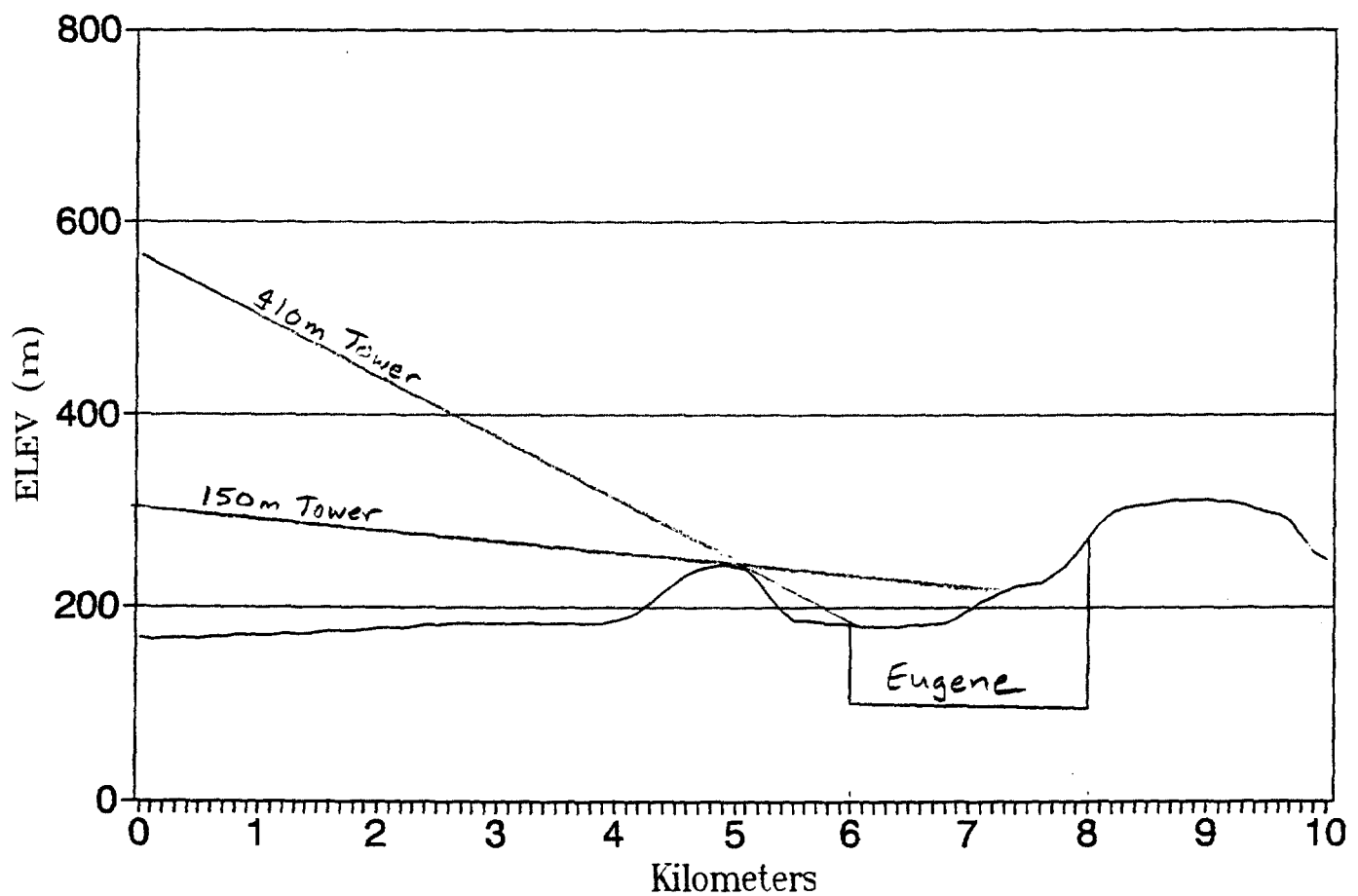


EXHIBIT 3A
Combined Communications

Proposed Site Path Profile

260 degree radial

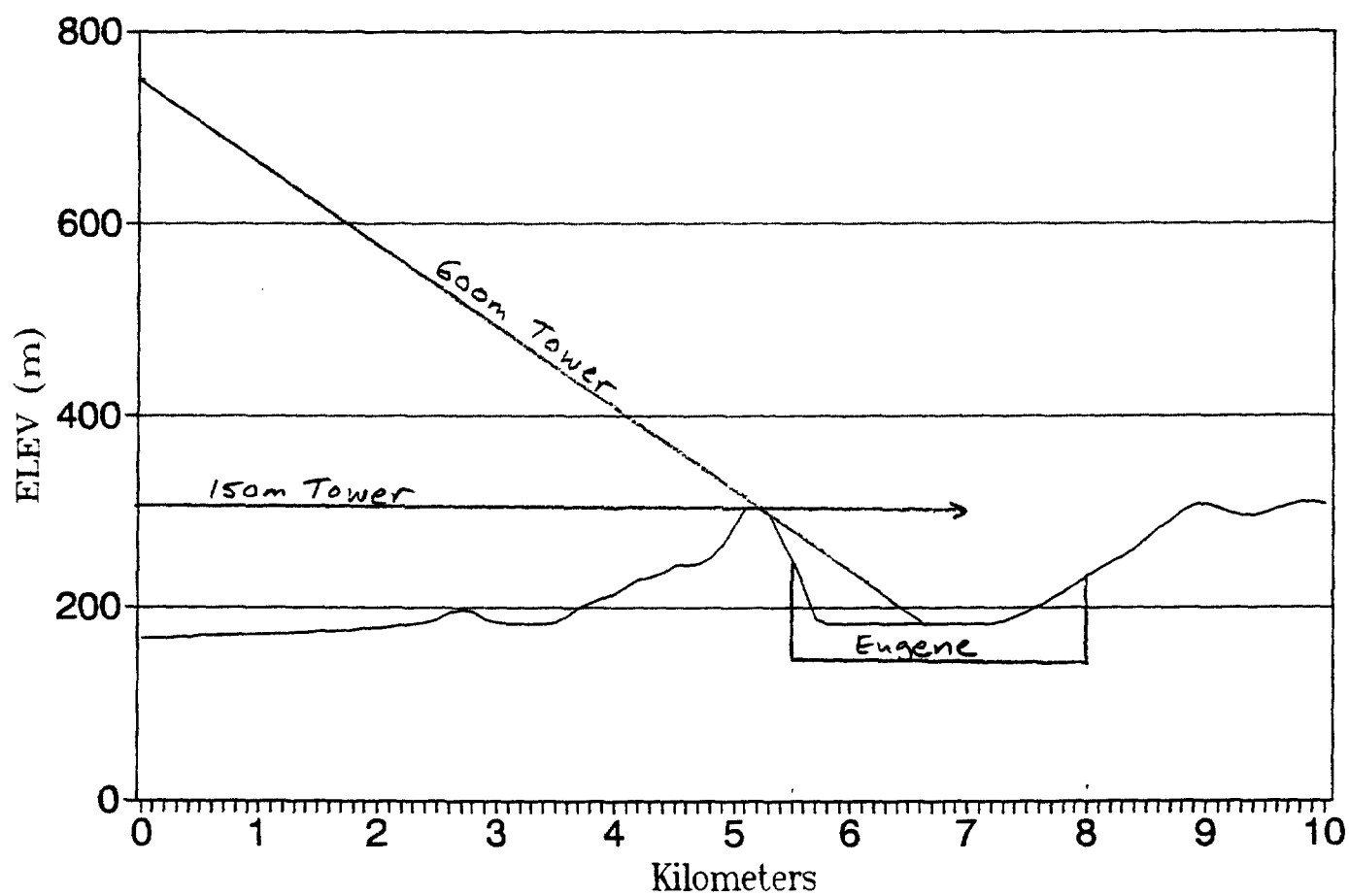


EXHIBIT 3B
Combined Communications

Proposed Site Path Profile

270 degree radial

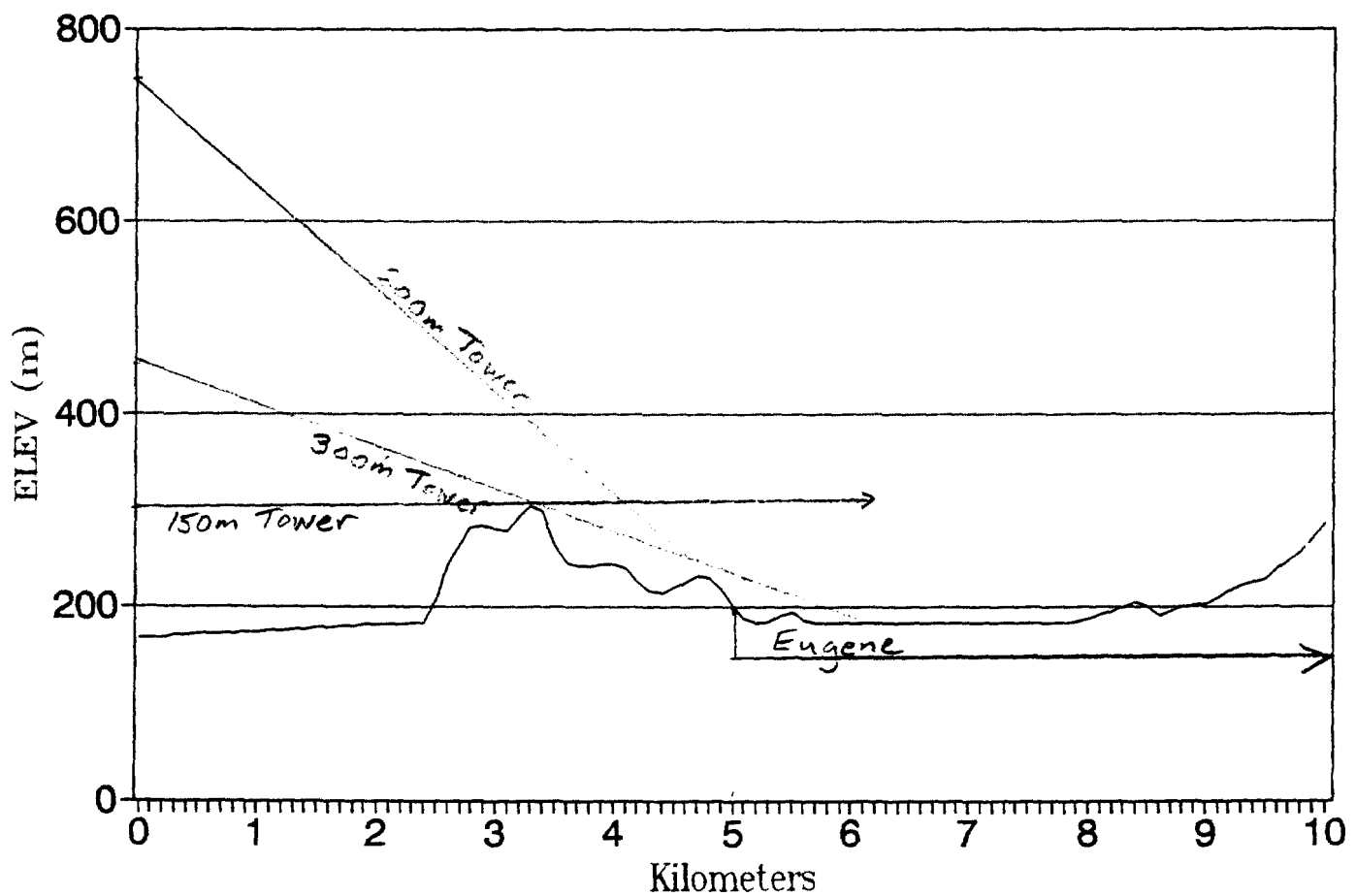


EXHIBIT 3C
Combined Communications

Proposed Site Path Profile

280 degree radial

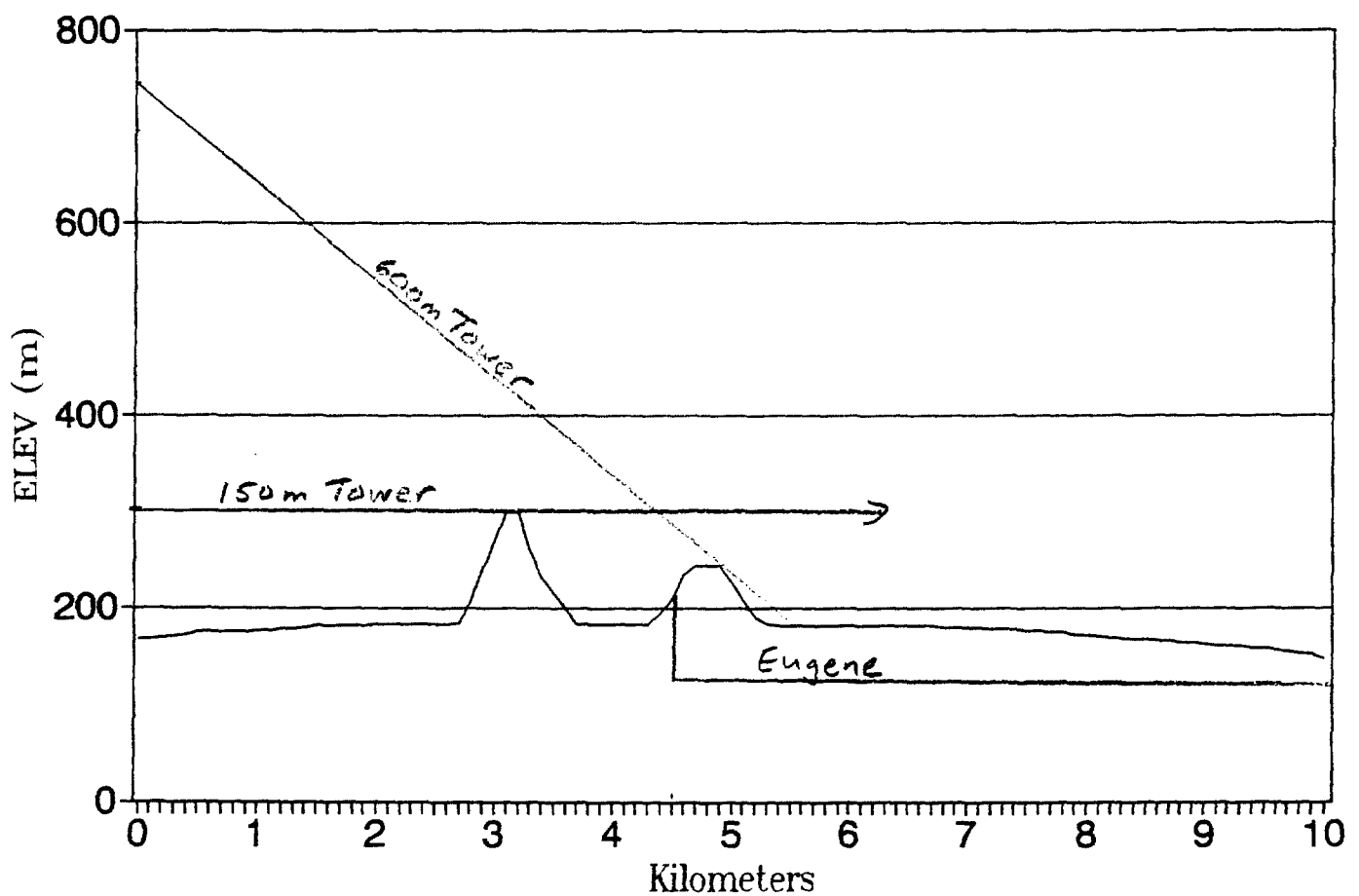


EXHIBIT 3D
Combined Communications

Proposed Site Path Profile

290 degree radial

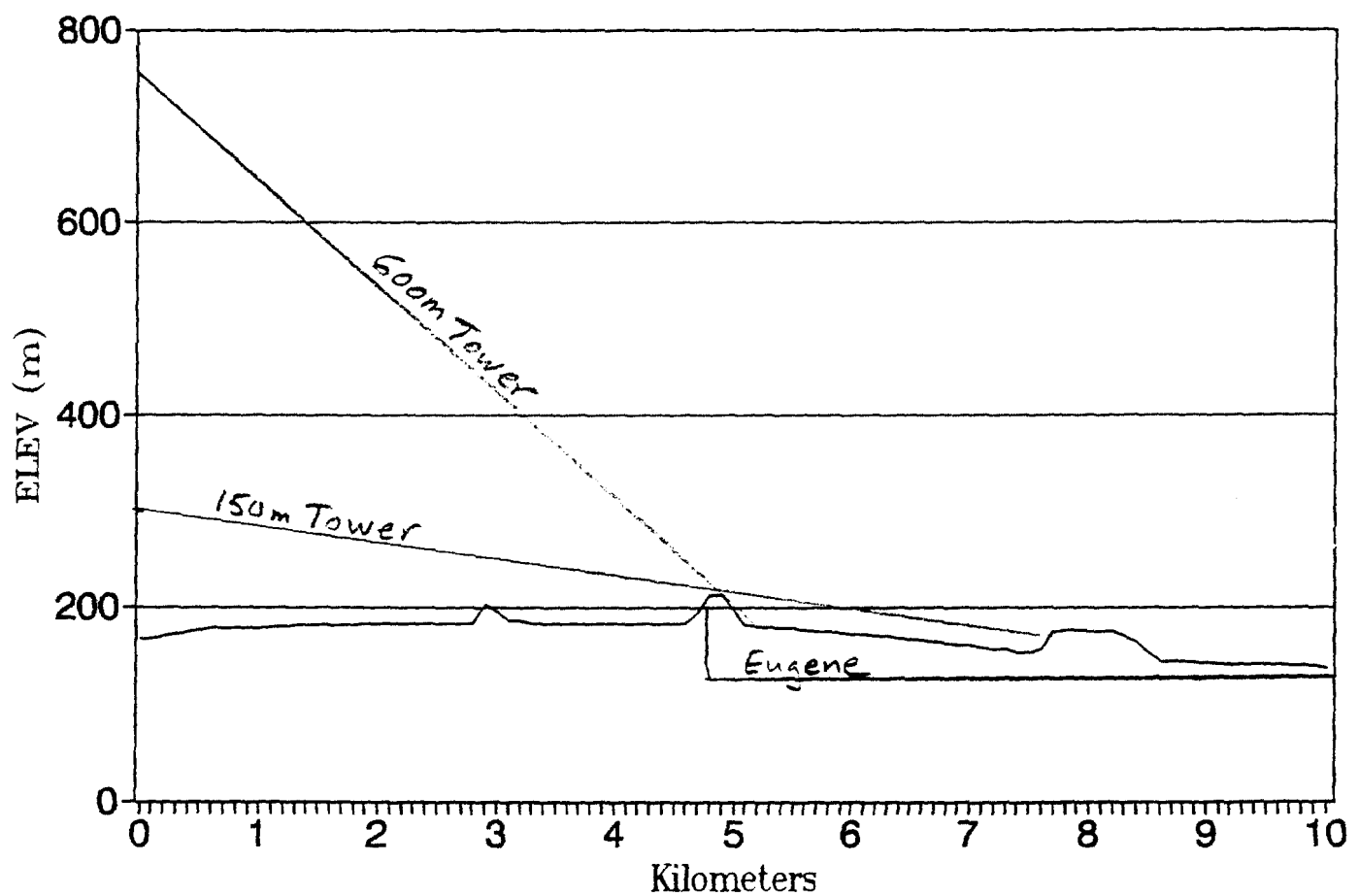


EXHIBIT 3E
Combined Communications

CERTIFICATE OF SERVICE

I, Nancy Lee Kemper, a secretary in the law offices of Luvaas, Cobb, Richards & Fraser, P.C., certify that I have on this 21st day of June, 1995, sent by United States mail, postage prepaid, on behalf of Combined Communications, Inc., copies of the foregoing "Opposition to Petition for Rulemaking" to:

Lars Conway
Conway Broadcasting
4415 Fremont Avenue, South
Minneapolis, MN 55409

John A. Karousos
Chief, Allocations Branch
Policy and Rules Division
Mass Media Bureau
2025 M Street, Suite 8322
Washington, DC 20554



Nancy Lee Kemper